

SENATE BILL 2419
By McNally

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, relative to the taxation of unauthorized substances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding a new Part 27, composed of Sections 2 through 11 of this act.

SECTION 2. The purpose of this act is to levy an excise tax to generate revenue for state and local law enforcement agencies and for the general fund. Nothing in this act may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

SECTION 3. As used in this act, unless the context clearly requires otherwise:

- (1) "Commissioner" means the commissioner of revenue;
- (2) "Controlled substance" means a controlled substance as defined in Section 39-17-402, and not included in "low-street-value drugs".
- (3) "Dealer" means any of the following:
 - (A) A person who actually or constructively possesses more than forty-two and one half (42.5) grams of marijuana, seven (7) or more grams of any other controlled substance that is sold by weight, or ten (10) or more dosage units of any other controlled substance that is not sold by weight.
 - (B) A person who in violation of Title 57, Chapter 3, Part 2, possesses an illicit alcoholic beverage for sale.
 - (C) A person who in violation of Section 57-4-201, possesses an illicit mixed alcoholic beverage for sale.
- (4) "Illicit alcoholic beverage " means an alcoholic beverage, as defined in Section 57-3-101, not authorized by the Tennessee alcoholic beverage commission.

Some examples of illicit alcoholic beverages liquor are the products known as “bootleg liquor”, “moonshine”, “non-tax-paid liquor”, and “white liquor”.

(5) “Illicit mixed alcoholic beverage” means a mixed alcoholic beverage, as defined in Section 57-4-102, composed in whole or in part from alcoholic beverages on which the charge imposed by Section 57-4-301 has not been paid.

(6) “Local law enforcement agency” means a municipal police department, a metropolitan police department, or a sheriff’s office.

(7) “Low-street-value drug” means any of the following controlled substances:

(A) An anabolic steroid as defined in Section 39-17-410(f).

(B) A depressant described in Section 39-17-412(c).

(C) A hallucinogenic substance described in Section 39-17-406(d).

(D) A stimulant described in Section 39-17-412(e).

(E) A controlled substance described in Section 39-17-414.

(8) “Marijuana” means all parts of the plant of the genus *Cannabis*, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.

(9) “Person” means “person”, as defined in Section 39-17-402.

(10) “State law enforcement agency” means any state agency, force, department, or unit responsible for enforcing criminal laws.

(11) “Unauthorized substance” means a controlled substance, an illicit mixed alcoholic beverage, or an illicit alcoholic beverage.

SECTION 4.

(a) An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(2) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this section.

(3) At the rate of fifty dollars (\$50.00) for each gram, or fraction thereof, of cocaine.

(4) At the rate of two hundred dollars (\$200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.

(5) At the rate of fifty dollars (\$50.00) for each ten (10) dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(6) At the rate of two hundred dollars (\$200.00) for each ten (10) dosage units, or fraction thereof, of any other controlled substance that is not sold by weight.

(b) A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(c) An excise tax is levied on illicit alcoholic beverages possessed by a dealer at the following rates:

(1) At the rate of thirty-one dollars and seventy cents (\$31.70) for each gallon, or fraction thereof, of illicit alcoholic beverages sold by the drink.

(2) At the rate of twelve dollars and eighty cents (\$12.80) for each gallon, or fraction thereof, of illicit alcoholic beverages not sold by the drink.

(d) A tax is levied on illicit mixed alcoholic beverages sold by a dealer at the rate of twenty dollars (\$20.00) on each four (4) liters and a proportional sum on lesser quantities.

SECTION 5.

(a) The tax levied in this act does not apply to a substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(b) The tax levied in this act does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any parts of the marijuana plant;

(2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks;

(3) Marijuana seeds that have been sterilized and are incapable of germination;

(4) Roots of the marijuana plant.

SECTION 6.

(a) The commissioner shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this act. Dealers shall report the taxes payable under this act at the time and on the form prescribed by the commissioner. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the commissioner shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Every local law enforcement agency and every state law enforcement agency must report to the department of revenue within forty-eight (48) hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the commissioner and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the commissioner. The report must be made when the arrest or seizure involves any of the

following unauthorized substances upon which a stamp has not been affixed as required by this act:

- (1) More than two and one-half (2.5) grams of marijuana.
- (2) Seven (7) or more grams of any other controlled substance that is sold by weight.
- (3) Ten (10) or more dosage units of any other controlled substance that is not sold by weight.
- (4) Any illicit mixed alcoholic beverage.
- (5) Any illicit alcoholic beverage.

SECTION 7. The tax imposed by this act is payable by any dealer who actually or constructively possesses an unauthorized substance in this state upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within forty-eight (48) hours after the dealer requires actual or constructive possession of a non-tax-paid unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this state, in which the case is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the unauthorized substance. Once the tax due on an unauthorized substance has been paid, no additional tax is due under this act even though the unauthorized substance may be handled by other dealers.

SECTION 8. Notwithstanding any other provision of law, an assessment against a dealer who possesses an unauthorized substance to which a stamp has not been affixed as required by this act shall be made as provided in this section. The commissioner shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the commissioner. The commissioner shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the commissioner shall collect the tax, penalty, and interest pursuant to the procedure set forth in Title 67, Chapter 1, Part 14, unless the dealer files with the commissioner a bond in the amount of the asserted liability for the tax, penalty, and interest. The

commissioner shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Title 67, Chapter 1, Part 18.

SECTION 9. Notwithstanding any other provision of law, information obtained pursuant to this act is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this act. Stamps issued pursuant to this act may not be used in a criminal prosecution other than a prosecution for a violation of this act. A person who disclosed information obtained pursuant to this act is guilty of a Class A misdemeanor. This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

SECTION 10.

(a) The commissioner shall credit the proceeds of the tax levied by this act to a special nonreverting account, to be called the "State Unauthorized Substances Tax Account", until the tax proceeds are unencumbered. The commissioner shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis.

(b) Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under Title 67, Chapter 1, Parts 14, 15, or 18 to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax and has neither fully paid nor timely contested the tax under Title 67, Chapter 1, Parts 14 or 18.

(c) The commissioner shall remit seventy-five percent (75%) of the part of the unencumbered tax proceeds that were collected by assessment to the state or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one (1) state or local law enforcement agency conducted the investigation, the commissioner shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The commissioner shall credit the remaining unencumbered tax proceeds to the general fund.

(d) The refund of a tax that has already been distributed shall be drawn initially from the State Unauthorized Substances Tax Account. The amount of refunded taxes that had been distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the account to that law enforcement agency. The amount of refunded taxes that had been credited to the general fund under this section and any interest shall be subtracted from succeeding credits to the general fund from the account.

SECTION 11. This act shall take effect July 1, 2004, the public welfare requiring it.